

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION
WRIT PETITION NO.2430 OF 1991

1. President Deopur, Dist. Lok Shri Shikshan S.T.Gadakh, Mandal, Tal.Sinnar, Nashik.

2. Lok Deopur, Dist. Nashik. The Shikshan Secretary, Mandal, Tal.Sinnar, .. Petitioners

v/s.

1. At Tal. Dnyaneshwar & Sinnar, Ramchandra Post Kurhade, Bhokini, Dist.Nashik.

2. The School Tribunal, Bombay. Presiding .. Respondents Officer,

Mr.P.N.Joshi for the petitioner.

Mr.S.P.Thorat for the respondent No.1.

CORAM : SMT.NISHITA MHATRE, J.

DATED : 29th September, 2005

ORAL JUDGMENT

The petition challenges the order of the School Tribunal dated 11th March, 1991.

2. The respondent No.1 was appointed by the petitioner as an Asstt.Teacher by an order dated 14th June, 1987. The appointment letter stipulated that the appointment was for a temporary period and for the academic year 1987-88. The respondent No.1 continued in this post till his services came to an end and at the end of the academic year. It

appears that on 27th May, 1987, the petitioners informed the Editor of the Daily newspaper "Deshdoot" that they wished to publish an advertisement for selection of a candidate for a vacancy arising in the reserved category. Applications were sought upto 10th June, 1987. There is nothing on record to indicate as to whether this advertisement was, in fact, published. Exhibit "B" to the petition is only the communication to the Editor of the newspaper requesting publication.

3. After the petitioners appointed the respondent No.1, by letter dated 14th June, 1987 sanction was accorded by the Government to his appointment for the academic year 1987-88. Accordingly, in the sanction order, it was mentioned that the said post was for the reserved category.

4. The petitioners issued a letter dated 25th February, 1988 informing the respondent No.1 that his services have been terminated. Aggrieved by this order, the respondent No.1 filed an appeal under section 9 of the M.E.P.S. Act. The contention of the respondent No.1 was that he had been appointed against the clear vacancy and therefore, his appointment only for a temporary period is meaningless. In fact, he should have been appointed as a probationer for a period of two

years as required under section 5 of the M.E.P.S.Act. The petitioners resisted the appeal by filing reply contending that the appointment was only for a temporary period and that the services of the respondent No.1 had been terminated on completion of that period. It was also contended that the post to which the respondent No.1 was appointed was reserved for the SC/ST candidates and therefore, the respondent No.1 who belonged to the open category, was not entitled to this post.

5. The School Tribunal by its judgment dated 11th March, 1991 has allowed the appeal and reinstated the respondent No.1 to original post with back wages and continuity of service. The Tribunal came to the conclusion that the respondent No.1 had been appointed against a clear and permanent vacancy and therefore, he should have been appointed as a probationer and not as a temporary employee. The Tribunal has also found that there was no record to indicate that the advertisement has, in fact, been published inviting applications from the reserved category candidates. The Tribunal on this basis has allowed the appeal.

6. Mr.Joshi, learned advocate appearing for the petitioners submits that the Tribunal has erred in concluding that there was a clear vacancy and that the respondent No.1 should have been appointed as a

probationer. He submits that the roster would show that there was a backlog for the reserved category candidates and therefore, the vacancy was for a reserved category employee. In civil application No.3431 of 1991 which is being heard together with the present writ petition, the petitioners have sought production of the roster and permission to read the same in evidence while deciding the writ petition. Mr.Joshi further submits that when the appointment order indicates that the appointment is only for a temporary period viz. academic year 1987-88, the respondent No.1 cannot claim for appointment as a probationer. He submits that sanction which was accorded for employment of the respondent No.1 was only for a temporary period and therefore, the termination of the respondent No.1's services was legal and proper. He places reliance of the judgment of this court in Akbar Peerbhoy College and ors. v. Mrs.Pramila N. Kutty and ors., reported in 1997(3) Mh.L.J., 195.

7. Mr.Thorat, advocate on the other hand submits on behalf of the respondent No.1 that the Tribunal having come to the conclusion that the appointment of the respondent No.1 was against a clear vacancy, was justified in declaring that the services of the respondent No.1 had been illegally terminated. He submits that the roster was not produced. The Tribunal was right in accepting, the respondent

No.1's case that his appointment was against a clear vacancy. He places reliance on the judgment in the case of National Education Society's High School and Junior College v. Mrs.Lulomool Monachary, 1987(2) Bom.C.R.521 to submit that since the respondent was qualified, his initial appointment in 1987 should have been as a probationer and not as a temporary employee.

8. In my view, having perused the judgment of the Tribunal, I find that the Tribunal has clearly erred in concluding that the vacancy was a clear vacancy and therefore, the respondent should have been appointed as a probationer. There is nothing on record to indicate that the vacancy was a clear one. In fact, the petitioners have produced in the civil application, copies of the roster which indicates prima facie that there is backlog of vacancies for the SC/ST categories. It would be, therefore, appropriate to remand the appeal for a fresh hearing in the light of the roster produced. The Tribunal will also consider the allegation of the respondent that after his services were terminated, a person who did not belong to the reserved category was appointed to the same post. In the event the Tribunal concludes that the vacancy was not for appointment of a reserved category candidate, it will consider whether the respondent is entitled to continue in the post in

view of the judgment of the Apex Court in the case of Hindustan Education Society & anr. v. Sk.Kaleem Sk.Gulam Nabi and ors., AIR 1997 SC 2126.

All these contentions would be considered by the Tribunal afresh.

9. Appeal is, therefore, remanded to the Tribunal for fresh consideration. Rule is made absolute accordingly. No order as to costs. The Tribunal shall permit the petitioners to produce on record the roster for consideration. The Tribunal shall dispose of the matter within three months from today.

(SMT.NISHITA MHATRE, J.)